| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/779,779 | 02/08/2001 | Jean M. Goldschmidt Iki | 42390P6482D | 6746 |

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| EXAMINER |
|---|
| RAMAN, USHA |

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| 2623 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *09 May 2008*.
2a)☐ This action is **FINAL**.        2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-5 and 7-26* is/are pending in the application.
     4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-5 and 7-26* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
     a)☐ All   b)☐ Some * c)☐ None of:
        1.☐ Certified copies of the priority documents have been received.
        2.☐ Certified copies of the priority documents have been received in Application No. _____.
        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
     * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
     Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

## *Appeal Brief*

In view of the appeal brief filed on May 9th, 2008, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Chris  Kelley/

Supervisory Patent Examiner, Art Unit 2623

## *Response to Arguments*

1. Applicant's arguments filed May 9th, 2008 have been fully considered but they are not persuasive.

Applicant argues (see Brief page 9) that, "Rosser not only does not suggest multiple versions of a program, it does not even suggest multiple versions of a

commercial, but instead different commercials for different products". Examiner

respectfully disagrees. Rosser discloses that such user profiles maybe used for

selecting a version of a program that matches the user's preferences. For example,

in the event a user profile indicates household demographics comprising children, an

alternative "clean" version of the program omitting objectionable material maybe

presented (see column 14 lines 15-23). Examiner further disagrees with applicant's

arguments (see page 11) stating that, "an entertainment program is available in

more than one version and the user prefers one version over another...Schein has

nothing to do with this realization. In Schein, the program is available at another

time and Schein lists other later times". It does not always have to be the case

wherein all the programs offered by different networks and/or different times have to

be the same exact version of the program. For example there exist scenarios

where, GONE WITH THE WIND airing on HBO1 (see figure 3) may be of a different

"version" than the GONE WITH THE WIND airing on NBC. This is further evidenced

by Rosser who teaches some networks may air "cleaner" version of a program.


### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as
>
> set forth in section 102 of this title, if the differences between the subject matter sought to be
>
> patented and the prior art are such that the subject matter as a whole would have been obvious
>
> at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains. Patentability shall not be negatived by the manner in which the invention

was made.

3. Claims 1-5, 7, 9-19, 21-22 and 25 rejected under 35 U.S.C. 103(a) as being

unpatentable over Schein et al. (US PG Pub. 2006/0168620) in view of Rosser (US

Pat. 6,446,261) and Ismail et al. (US Pat. 6,614,987)

4.

With Regards to claim 1, 10 and 16, Schein discloses a method comprising:

Receiving an EPG at the electronic device (see [0026]);

Receiving a selection of entertainment program within the EPG from a user at the

electronic device (see [0032], [0033]);

Identifying (and therefore determining) multiple available versions of the same

selected entertainment program in the electronic programming guide when a user

selects "when else" option (see fig. 3).

Schein discloses that upon determining that there multiple versions of the same

selected program, the system allows the user to either automatically record/tune one

of the multiple versions or simply notify the plurality of versions of the program (see

[0032], "the user may wish to find out if the movie GONE WITH THE WIND is

showing at other times such that the user may either automatically record the future

presentation of GONE WITH THE WIND, automatically tune to the future

presentation of GONE WITH THE WIND, or simply be aware that GONE WITH THE

WIND will be showing at a future time"). Schein therefore discloses the step merely

displaying the identified versions when no automatic tuning has been set to notify the user of the plurality of program occurrences.

While Schein discloses automatically tuning to one of the multiple occurrences (i.e. automatic program selection), fails to disclose selecting one of the multiple versions by comparing the identified characteristics to the received user preferences for entertainment program characteristics and selecting the program that has the most characteristics conforming to the user preferences.

Rosser discloses a method of receiving user preferences for entertainment program characteristics from a user, wherein the preferences are stored in the electronic device. See column 3, lines 51-56. Rosser further discloses that such user profiles maybe used for selecting a version of a program that matches the user's preferences. For example, in the event a user profile indicates household demographics comprising children, an alternative "clean" version of the program omitting objectionable material maybe presented (see column 14 lines 15-23). Furthermore, the step of automatically recording programs when programs match a user's preference on program characteristics is taught by Ismail. See column 1, lines 45-50. Ismail discloses the step of automatically selecting a program that matches user's preferences, wherein Rosser teaches using user preferences for selecting a particular instance of multiple versions of a program matching the user preferences.

Accordingly it would have been obvious to one of ordinary skill in the art to modify the system of Schein in view of Rosser and Ismail's teachings by

automatically recording or tuning to one of the multiple versions of a program based

on maximum correlation between user's preferences on program characteristics and

the programs.

With further regards to claim 10, the methods are computer executable

instructions stored in memory (28) and executed by a processor (26). See Schein:

[0024] and [0038].

With regards to claims 2, 11 and 17, the system comprises the step of identifying

multiple versions of the entertainment program that start within a threshold period of

one another (see Schein: [0038], step 402).

With regards to claims 3, 12 and 18, the multiple versions are provided on

different transport media (i.e. DBS and cable), and the system further identifies

information regarding the channel transport medium (see Schein: [0018]) and the

selection comprises selecting based on the set of transport medium descriptive

information (see Schein [0031]).

With regards to claims 4, 13, 19 the system comprises the step of identifying

multiple versions that all start approximately at the same time. See Schein: [0038],

step 402.

With regards to claims 5, and 14, the selection comprises selecting one of

multiple versions having the identified characteristics (e.g. selection source) most

closely resembling the user preferences (e.g. preferred selection source) for

entertainment program characteristics. See Schein: [0018], [0031].

With regards to claims 7, 15, and 21, the identified characteristic for each of the multiple versions includes the channel transport medium. See Schein [0018].

With regards to claim 9, the system comprises the step of identifying multiple versions in the EPG. See Schein: [0034], [0035].

With regards to claims 22, the system comprises the step of determining the user preferences by receiving preference information through manual inputs from a user. See Schein [0031], the step of "activating" and "deletion" require user intervention, and therefore are "manual inputs" from the user.

With further regards to claim 23 and 26, Rosser shows determining the user preferences by monitoring the behavior of the user (col. 8 lines 1-55, col. 9 lines 50-67, col. 12 lines 1-5).

With regards to claim 24, Rosser shows identifying a user of an entertainment system (col. 15 lines 5-28), accessing user preferences for the identified user (col. 15 lines 28), and selecting content from versions of content based on a comparison of the sets of descriptive information (col. 14 lines 50-60).

With regards to claims 25, the system comprises a user interface controller for receiving preferences through manual information inputs from a user. See Schein: [0024]

### Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Usha Raman whose telephone number is (571) 272-7380. The examiner can normally be reached on Mon-Fri: 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris  Kelley/

Supervisory Patent Examiner, Art

Unit 2623

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